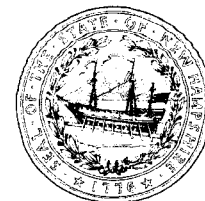




The State of New Hampshire  
**Department of Environmental Services**



Michael P. Nolin  
Commissioner

Russell Family Trust  
28481 Hwy 100  
San Benito, TX 78586-8382

Re: East Washington Road  
Wetlands Bureau File # 2006-00035

**ADMINISTRATIVE ORDER**  
**No. WD 06-010**

March 10, 2006

**A. INTRODUCTION**

This Administrative Order is issued by the Department of Environmental Services, Water Division to the Russell Family Trust pursuant to RSA 482-A. This Administrative Order is effective upon issuance.

**B. PARTIES**

1. The Department of Environmental Services, Water Division ("DES"), is a duly-constituted administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive, Concord, New Hampshire.
2. Russell Family Trust is apparently a trust believed to own property in New Hampshire, having a mailing address of 28481 Hwy 100, San Benito, Texas 78586-8382. James Russell and Sarah Russell are co-trustees of the Trust.

**C. STATEMENTS OF FACTS AND LAW**

1. Pursuant to RSA 482-A, the Department of Environmental Services ("DES") regulates dredging, filling, and construction in or on any bank, flat, marsh, wetland, or swamp in and adjacent to any waters of the state. Pursuant to RSA 482-A:11, I, the Commissioner of DES has adopted Wt 100 *et seq.* to implement this program.
2. RSA 482-A:3, I states that "no person shall excavate, remove, fill, dredge or construct any structures in or on any bank, flat, marsh, or swamp in and adjacent to any waters of the state without permit from [DES]."
3. RSA 482-A:14, III provides that "(f)ailure, neglect or refusal to comply with [RSA 482-A] or rules adopted under [that] chapter, or an order or condition of a permit issued under [RSA 482-A], and the misrepresentation by any person of a material fact made in connection with any activities regulated or prohibited by [RSA 482-A] shall be deemed violations of RSA 482-A."
4. Admin. Rule Wt. 304.05(b) states that "all skid trails, truck roads and log landings shall be laid out using appropriate erosion control devices, as outlined in the Best Management Practices for Erosion Control on Timber Operations in NH, so that the grade approaching a stream or pond is broken and surface water dispersed."

5. The Russell Family Trust is the owner of land located at East Washington Road in Hillsborough, more particularly described on the Hillsborough Tax Map as Map 1 Lots 6 & 8 ("the Property").
6. Andy Pysz is listed as the logger responsible for cutting on the Department of Revenue Notice of Intent to Cut Wood or Timber and the Wetlands Bureau Minimum Impact Forestry Notification.
7. On January 6, 2006, DES received a Notification of Forest Management or Timber Harvest Activities Having Minimum Wetlands Impact signed by James Russell for 3 crossings on the Property.
8. On January 13, 2006, DES received a complaint from NH Forests and Lands that violations of forestry BMPs and un-permitted crossings had occurred. Photos submitted with the complaint showed that a pole ford was incorrectly installed to cross a perennial stream and that construction of a skid trail had resulted in large scale rutting of a wetland.
9. On January 16, 2006, DES personnel conducted a site inspection of the Property and observed the following:
  - a. Approximately 80 linear feet of perennial stream bank had been rutted by machinery and disturbed as the result of the improper installation of the pole ford crossing. This crossing was indicated as Crossing 1 on the Minimum Impact Forestry Notification;
  - b. The approaches to Beard Brook at this crossing were not stabilized, resulting in rutting, collapsing stream banks and erosion of exposed soil in to the stream. No erosion controls were installed at the crossing;
  - b. Approximately 125 linear feet of an intermittent stream channel had been rutted and skidded through. The skid trail was constructed across the stream channel and no crossing devices were installed. The adjacent wetland was also rutted as a result of use as a skid trail. Sediment deposition on the snow indicated that erosion of the exposed soils had occurred and flowed directly into Beard Brook. No erosion and/or turbidity controls were installed;
  - c. A skid trail measuring approximately 450 feet long and 40 – 70 feet wide was constructed and located partially in a wetland. The skid trail had rutted approximately 20,000 square feet of the wetland. No erosion controls were installed;
  - d. The skid trail crossing of the wetland exceeded 20 feet in width and 50 feet in length, in contradiction to and in excess of the Minimum Forestry Notification.
  - e. No erosion controls or BMPs were installed on the skid trail and evidence of large scale erosion and sediment deposition leading in a path to the stream and adjacent wetland was observed;
  - f. A skid trail intercepted an intermittent stream and diverted the flow down the skid trail. The skid trail paralleled a stone wall at this location and was constructed in a wetland. It measured approximately 200 feet in length and approximately 30 feet in width, resulting in approximately 6,000 square feet of rutting; and
  - g. A wetland crossing (specifically on lot 8) had been rutted, resulting in approximately 200 square feet of wetland disturbance. This crossing was indicated as Crossing 2 on the Minimum Impact Forestry Notification.

10. On January 19, 2006, DES personnel contacted Mr. Pysz by telephone. Mr. Pysz agreed to cease logging activities on the properties and install temporary erosion control measures by hand along the skid trail and Beard Brook. The ruts on Crossing #2 would also be smoothed out by hand and the area stabilized by spreading hay mulch and installing erosion controls downstream of the crossing.

11. On February 9, 2006, DES received a letter from Mr. Pysz indicating that temporary erosion controls were installed near the Beard Brook crossing (indicated as Crossing 1 on the Forestry Notification). Mr. Pysz also indicated that he would not continue logging on the property until the summer.

#### **D. DETERMINATION OF VIOLATIONS**

1. The Russell Family Trust has violated RSA 482-A:3, I, by dredging approximately 80 linear feet of perennial stream channel (Beard Brook) in excess of and in contradiction to the Minimum Impact Forestry Notification.

2. The Russell Family Trust has violated RSA 482-A:3, I, by dredging and filling approximately 125 linear feet of intermittent stream channel without a permit from DES.

3. The Russell Family Trust has violated RSA 482-A:3, I, by dredging a minimum of 20,000 square feet of wetland for a skid trail without a permit from DES.

4. The Russell Family Trust has violated RSA 482-A:3, I by dredging and filling approximately 200 square feet of wetland at a crossing in excess of and in contradiction to the Minimum Impact Forestry Notification.

5. The Russell Family Trust has violated Wt 304.05(b)(c) by failing to comply with the BMPs specifically by:

- a. Failure to use water bars and erosion controls on skid trails;
- b. Use of pole fords at high flow;
- c. Failure to install crossing devices at stream and wetland crossings.

#### **E. ORDER**

Based on the above findings, DES hereby orders The Russell Family Trust as follows:

1. **Immediately cease and desist** all activities on the Property, except as necessary to stabilize the Property pursuant to this Order.
2. **Within 10 days of the date of this Order**, submit an erosion and sedimentation control plan for the Property and submit the plan to DES for review and approval. The erosion and sedimentation plan shall be prepared by a certified wetland scientist or a qualified environmental consultant certified in erosion control and shall include temporary and permanent erosion control measures necessary to stabilize the Property, protect surface water quality, prevent further

impacts to surface waters and a detailed schedule of activities demonstrating how the Property will brought into compliance. The erosion and sedimentation control measures shall be implemented **by April 1, 2006**.

3. **By July 1, 2006**, submit a wetlands restoration plan to the DES Wetland Bureau for review and approval. The restoration plan shall be prepared by a certified wetland scientist, and include provisions for restoration of the wetland and surface waters impacted by activities at the Property. The following shall be submitted with the restoration plan:

- a. A plan with dimensions, drawn to scale, showing:
  - i. Existing conditions and jurisdictional impacts on the sites, with delineated jurisdictional wetland boundaries and land topography; and
  - ii. Proposed conditions after reestablishing the jurisdictional areas;
- b. A detailed description of the proposed means of erosion control (silt fence, hay bales, etc.) and stabilization of the restoration area;
- c. A detailed description of the proposed planting plan for the stabilization and revegetation of the restoration areas;
- d. A stream restoration plan with dimensions, drawn to scale, showing:
  - i. Methods and materials to be used for reestablishing all impacted stream channels and stream banks;
  - ii. A detailed stream bank planting plan including the quantity and type of vegetation to be planted; and
  - iii. Proposed conditions after reestablishing the jurisdictional boundaries.
- e. A description of the proposed construction sequence, equipment and methods for accomplishing restoration. All wetland and stream restoration shall be completed **by September 1, 2006**.
- f. A description of the method of documenting at least 75% survival of all vegetation planted during the restoration project. This should include at a minimum, an initial monitoring report documenting that restoration has been completed and monitoring progress reports for two successive growing seasons following completion of the restoration project. These reports should be submitted to DES on **October 1, 2006** and **October 1, 2007**, respectively.

4. Retain a certified wetland scientist to supervise the implementation of the restoration and to submit the restoration progress reports prepared in accordance with Item E.3 above.

5. Implement the restoration plan proposed in accordance with Item E.3, above only after receiving written approval, and as conditioned, by DES.

6. Send correspondence, data, reports, and other submissions made in connection with this Administrative Order, **other than appeals**, to DES as follows:

Dawn Buker, Wetlands Compliance Specialist  
DES Water Division  
29 Hazen Drive - P.O. Box 95  
Concord, NH 03302-0095  
Phone: (603) 271-4066  
e-mail: [dbuker@des.state.nh.us](mailto:dbuker@des.state.nh.us)

#### F. APPEAL


Any person aggrieved by this Order may request that DES reconsider the Order within 20 days of the date of the Order. The request for reconsideration must comply with Wt 203.01(d) (copy attached), and will be processed in accordance with Wt 203.01(e)-(j). Any party not satisfied with the decision on reconsideration may appeal to the Wetlands Council. Please note under RSA 482-A:10, II, the Council may not consider any ground that is not set forth in the request for reconsideration.

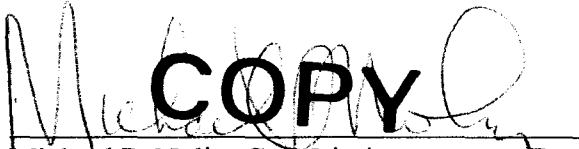
Filing an appeal or motion for reconsideration does not relieve The Russell Family Trust of the obligation to comply with the Order.

#### G. OTHER PROVISIONS

Please note that RSA 482-A:13 and RSA 482-A:14 provides for administrative fines, civil penalties, and criminal penalties for the violations noted in this Order, as well as for failing to comply with the Order itself. DES will continue to monitor The Russell Family Trust compliance with applicable requirements and will take appropriate action if additional violations are discovered.

This Order is being recorded in the Hillsborough County Registry of Deeds so as to run with the land.

  
for Harry T. Stewart, Director  
Water Division

  
Michael P. Nolin, Commissioner  
Department of Environmental Services

#### Certified Mail/RRR:

cc: Public Information Officer, DES PIP Office  
Jennifer Patterson, Sr. Asst. Attorney General, NHDOJ/EPB  
Dawn Buker, Wetlands Bureau  
Neil Bilodeau, NH Forests and Lands  
cc: Town of Hillsborough Selectmen and Conservation Committee]  
Andy Pysz  
Gretchen Hamel, Legal Unit Administrator